

110TH CONGRESS
1ST SESSION

S. 2271

AN ACT

To authorize State and local governments to divest assets in companies that conduct business operations in Sudan, to prohibit United States Government contracts with such companies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Sudan Accountability
3 and Divestment Act of 2007”.

4 **SEC. 2. DEFINITIONS.**

5 In this Act:

6 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**
7 **TEES.**—The term “appropriate congressional com-
8 mittees” means—

9 (A) the Committee on Banking, Housing,
10 and Urban Affairs, the Committee on Foreign
11 Relations, and the Select Committee on Intel-
12 ligence of the Senate; and

13 (B) the Committee on Financial Services,
14 the Committee on Foreign Affairs, and the Per-
15 manent Select Committee on Intelligence of the
16 House of Representatives.

17 (2) **BUSINESS OPERATIONS.**—The term “busi-
18 ness operations” means engaging in commerce in
19 any form in Sudan, including by acquiring, devel-
20 oping, maintaining, owning, selling, possessing, leas-
21 ing, or operating equipment, facilities, personnel,
22 products, services, personal property, real property,
23 or any other apparatus of business or commerce.

24 (3) **EXECUTIVE AGENCY.**—The term “executive
25 agency” has the meaning given the term in section

1 4 of the Office of Federal Procurement Policy Act
2 (41 U.S.C. 403).

3 (4) GOVERNMENT OF SUDAN.—The term “Gov-
4 ernment of Sudan”—

5 (A) means the government in Khartoum,
6 Sudan, which is led by the National Congress
7 Party (formerly known as the National Islamic
8 Front) or any successor government formed on
9 or after October 13, 2006 (including the coali-
10 tion National Unity Government agreed upon in
11 the Comprehensive Peace Agreement for
12 Sudan); and

13 (B) does not include the regional govern-
14 ment of southern Sudan.

15 (5) MARGINALIZED POPULATIONS OF SUDAN.—
16 The term “marginalized populations of Sudan” re-
17 fers to—

18 (A) adversely affected groups in regions
19 authorized to receive assistance under section
20 8(c) of the Darfur Peace and Accountability
21 Act (Public Law 109–344; 50 U.S.C. 1701
22 note); and

23 (B) marginalized areas in Northern Sudan
24 described in section 4(9) of such Act.

1 (6) MILITARY EQUIPMENT.—The term “mili-
2 tary equipment” means—

3 (A) weapons, arms, military supplies, and
4 equipment that readily may be used for military
5 purposes, including radar systems or military-
6 grade transport vehicles; or

7 (B) supplies or services sold or provided di-
8 rectly or indirectly to any force actively partici-
9 pating in armed conflict in Sudan.

10 (7) MINERAL EXTRACTION ACTIVITIES.—The
11 term “mineral extraction activities” means explor-
12 ing, extracting, processing, transporting, or whole-
13 sale selling or trading of elemental minerals or asso-
14 ciated metal alloys or oxides (ore), including gold,
15 copper, chromium, chromite, diamonds, iron, iron
16 ore, silver, tungsten, uranium, and zinc.

17 (8) OIL-RELATED ACTIVITIES.—

18 (A) IN GENERAL.—Except as provided in
19 subparagraph (B), the term “oil-related activi-
20 ties” means—

21 (i) exporting, extracting, producing,
22 refining, processing, exploring for, trans-
23 porting, selling, or trading oil; and

1 (ii) constructing, maintaining, or op-
2 erating a pipeline, refinery, or other oilfield
3 infrastructure.

4 (B) EXCLUSIONS.—A person shall not be
5 considered to be involved in an oil-related activ-
6 ity if—

7 (i) the person is involved in the retail
8 sale of gasoline or related consumer prod-
9 ucts in Sudan but is not involved in any
10 other activity described in subparagraph
11 (A); or

12 (ii) the person is involved in leasing,
13 or owns, rights to an oil block in Sudan
14 but is not involved in any other activity de-
15 scribed in subparagraph (A).

16 (9) PERSON.—The term “person” means—

17 (A) a natural person, corporation, com-
18 pany, business association, partnership, society,
19 trust, any other nongovernmental entity, orga-
20 nization, or group;

21 (B) any governmental entity or instrumen-
22 tality of a government, including a multilateral
23 development institution (as defined in section
24 1701(c)(3) of the International Financial Insti-
25 tutions Act (22 U.S.C. 262r(c)(3))); and

1 (C) any successor, subunit, parent com-
2 pany or subsidiary of any entity described in
3 subparagraph (A) or (B).

4 (10) POWER PRODUCTION ACTIVITIES.—The
5 term “power production activities” means any busi-
6 ness operation that involves a project commissioned
7 by the National Electricity Corporation of Sudan or
8 other similar entity of the Government of Sudan
9 whose purpose is to facilitate power generation and
10 delivery, including establishing power-generating
11 plants or hydroelectric dams, selling or installing
12 components for the project, or providing service con-
13 tracts related to the installation or maintenance of
14 the project.

15 (11) STATE.—The term “State” means each of
16 the several States, the District of Columbia, the
17 Commonwealth of Puerto Rico, the United States
18 Virgin Islands, Guam, American Samoa, and the
19 Commonwealth of the Northern Mariana Islands.

20 (12) STATE OR LOCAL GOVERNMENT.—The
21 term “State or local government” includes—

22 (A) any State and any agency or instru-
23 mentality thereof;

24 (B) any local government within a State,
25 and any agency or instrumentality thereof;

1 (C) any other governmental instrumen-
 2 tality; and

3 (D) any public institution of higher edu-
 4 cation within the meaning of the Higher Edu-
 5 cation Act of 1965 (20 U.S.C. 1001 et seq.).

6 **SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS**
 7 **TO DIVEST FROM CERTAIN COMPANIES DI-**
 8 **RECTLY INVESTED IN CERTAIN SUDANESE**
 9 **SECTORS.**

10 (a) SENSE OF CONGRESS.—It is the sense of Con-
 11 gress that the United States Government should support
 12 the decision of any State or local government to divest
 13 from, or to prohibit the investment of assets of the State
 14 or local government in, a person that the State or local
 15 government determines poses a financial or reputational
 16 risk.

17 (b) AUTHORITY TO DIVEST.—Notwithstanding any
 18 other provision of law, a State or local government may
 19 adopt and enforce measures that meet the requirements
 20 of subsection (e) to divest the assets of the State or local
 21 government from, or prohibit investment of the assets of
 22 the State or local government in, persons that the State
 23 or local government determines, using credible information
 24 available to the public, are conducting or have direct in-

1 vestments in business operations described in subsection
2 (d).

3 (c) NOTICE TO DEPARTMENT OF JUSTICE.—Not
4 later than 30 days after adopting a measure pursuant to
5 subsection (b), a State or local government shall submit
6 written notice to the Attorney General describing the
7 measure.

8 (d) BUSINESS OPERATIONS DESCRIBED.—

9 (1) IN GENERAL.—Business operations de-
10 scribed in this subsection are business operations in
11 Sudan that include power production activities, min-
12 eral extraction activities, oil-related activities, or the
13 production of military equipment.

14 (2) EXCEPTIONS.—Business operations de-
15 scribed in this subsection do not include business op-
16 erations that the person conducting the business op-
17 erations can demonstrate—

18 (A) are conducted under contract directly
19 and exclusively with the regional government of
20 southern Sudan;

21 (B) are conducted under a license from the
22 Office of Foreign Assets Control, or are ex-
23 pressly exempted under Federal law from the
24 requirement to be conducted under such a li-
25 cense;

1 (C) consist of providing goods or services
2 to marginalized populations of Sudan;

3 (D) consist of providing goods or services
4 to an internationally recognized peacekeeping
5 force or humanitarian organization;

6 (E) consist of providing goods or services
7 that are used only to promote health or edu-
8 cation; or

9 (F) have been voluntarily suspended.

10 (e) REQUIREMENTS.—Any measure taken by a State
11 or local government under subsection (b) shall meet the
12 following requirements:

13 (1) NOTICE.—The State or local government
14 shall provide written notice and an opportunity to
15 comment in writing to each person to whom a meas-
16 ure is to be applied.

17 (2) TIMING.—The measure shall apply to a per-
18 son not earlier than the date that is 90 days after
19 the date on which written notice is provided to the
20 person under paragraph (1).

21 (3) APPLICABILITY.—The measure shall not
22 apply to a person that demonstrates to the State or
23 local government that the person does not conduct
24 or have direct investments in business operations de-
25 scribed in subsection (d).

1 (4) SENSE OF CONGRESS ON AVOIDING ERRO-
 2 NEOUS TARGETING.—It is the sense of Congress
 3 that a State or local government should not adopt
 4 a measure under subsection (b) with respect to a
 5 person unless the State or local government has
 6 made every effort to avoid erroneously targeting the
 7 person and has verified that the person conducts or
 8 has direct investments in business operations de-
 9 scribed in subsection (d).

10 (f) DEFINITIONS.—In this section:

11 (1) INVESTMENT.—The “investment” of assets,
 12 with respect to a State or local government, in-
 13 cludes—

14 (A) a commitment or contribution of as-
 15 sets;

16 (B) a loan or other extension of credit of
 17 assets; and

18 (C) the entry into or renewal of a contract
 19 for goods or services.

20 (2) ASSETS.—

21 (A) IN GENERAL.—Except as provided in
 22 subparagraph (B), the term “assets” refers to
 23 public monies and includes any pension, retire-
 24 ment, annuity, or endowment fund, or similar

1 instrument, that is controlled by a State or
2 local government.

3 (B) EXCEPTION.—The term “assets” does
4 not include employee benefit plans covered by
5 title I of the Employee Retirement Income Se-
6 curity Act of 1974 (29 U.S.C. 1001 et seq.).

7 (g) NONPREEMPTION.—A measure of a State or local
8 government authorized under subsection (b) is not pre-
9 empted by any Federal law or regulation.

10 (h) EFFECTIVE DATE.—

11 (1) IN GENERAL.—Except as provided in para-
12 graph (2), this section applies to measures adopted
13 by a State or local government before, on, or after
14 the date of the enactment of this Act.

15 (2) NOTICE REQUIREMENTS.—Subsections (c)
16 and (e) apply to measures adopted by a State or
17 local government on or after the date of the enact-
18 ment of this Act.

19 **SEC. 4. SAFE HARBOR FOR CHANGES OF INVESTMENT**
20 **POLICIES BY ASSET MANAGERS.**

21 (a) IN GENERAL.—Section 13 of the Investment
22 Company Act of 1940 (15 U.S.C. 80a–13) is amended by
23 adding at the end the following:

24 “(c) LIMITATION ON ACTIONS.—

1 “(1) IN GENERAL.—Notwithstanding any other
2 provision of Federal or State law, no person may
3 bring any civil, criminal, or administrative action
4 against any registered investment company, or any
5 employee, officer, director, or investment adviser
6 thereof, based solely upon the investment company
7 divesting from, or avoiding investing in, securities
8 issued by persons that the investment company de-
9 termines, using credible information that is available
10 to the public, conduct or have direct investments in
11 business operations in Sudan described in section
12 3(d) of the Sudan Accountability and Divestment
13 Act of 2007.

14 “(2) APPLICABILITY.—

15 “(A) ACTIONS FOR BREACHES OF FIDU-
16 CIARY DUTIES.—Paragraph (1) does not pre-
17 vent a person from bringing an action based on
18 a breach of a fiduciary duty owed to that per-
19 son with respect to a divestment or non-invest-
20 ment decision, other than as described in para-
21 graph (1).

22 “(B) DISCLOSURES.—Paragraph (1) shall
23 not apply to a registered investment company,
24 or any employee, officer, director, or investment
25 adviser thereof, unless the investment company

1 makes disclosures in accordance with regula-
 2 tions prescribed by the Commission.

3 “(3) PERSON DEFINED.—For purposes of this
 4 subsection the term ‘person’ includes the Federal
 5 Government and any State or political subdivision of
 6 a State.”.

7 (b) SEC REGULATIONS.—Not later than 120 days
 8 after the date of the enactment of this Act, the Securities
 9 and Exchange Commission shall prescribe regulations, in
 10 the public interest and for the protection of investors, to
 11 require disclosure by each registered investment company
 12 that divests itself of securities in accordance with section
 13 13(c) of the Investment Company Act of 1940. Such rules
 14 shall require the disclosure to be included in the next peri-
 15 odic report filed with the Commission under section 30
 16 of such Act (15 U.S.C. 80a–29) following such divestiture.

17 **SEC. 5. SENSE OF CONGRESS REGARDING CERTAIN ERISA**
 18 **PLAN INVESTMENTS.**

19 It is the sense of Congress that a fiduciary of an em-
 20 ployee benefit plan, as defined in section 3(3) of the Em-
 21 ployee Retirement Income Security Act of 1974 (29
 22 U.S.C. 1002(3)), may divest plan assets from, or avoid
 23 investing plan assets in, any person the fiduciary deter-
 24 mines is conducting or has direct investments in business
 25 operations in Sudan described in section 3(d) of this Act,

1 without breaching the responsibilities, obligations, or du-
 2 ties imposed upon the fiduciary by section 404 of the Em-
 3 ployee Retirement Income Security Act of 1974 (29
 4 U.S.C. 1104), if—

5 (1) the fiduciary makes such determination
 6 using credible information that is available to the
 7 public; and

8 (2) such divestment or avoidance of investment
 9 is conducted in accordance with section 2509.94–1
 10 of title 29, Code of Federal Regulations (as in effect
 11 on the day before the date of the enactment of this
 12 Act).

13 **SEC. 6. PROHIBITION ON UNITED STATES GOVERNMENT**
 14 **CONTRACTS.**

15 (a) **CERTIFICATION REQUIREMENT.**—The head of
 16 each executive agency shall ensure that each contract en-
 17 tered into by such executive agency for the procurement
 18 of goods or services includes a clause that requires the
 19 contractor to certify to the contracting officer that the
 20 contractor does not conduct business operations in Sudan
 21 described in section 3(d).

22 (b) **REMEDIES.**—

23 (1) **IN GENERAL.**—The head of an executive
 24 agency may impose remedies as provided in this sub-
 25 section if the head of the executive agency deter-

1 mines that the contractor has submitted a false cer-
2 tification under subsection (a) after the date the
3 Federal Acquisition Regulation is amended under
4 subsection (e) to implement the requirements of this
5 section.

6 (2) TERMINATION.—The head of an executive
7 agency may terminate a covered contract upon the
8 determination of a false certification under para-
9 graph (1).

10 (3) SUSPENSION AND DEBARMENT.—The head
11 of an executive agency may debar or suspend a con-
12 tractor from eligibility for Federal contracts upon
13 the determination of a false certification under para-
14 graph (1). The debarment period may not exceed 3
15 years.

16 (4) INCLUSION ON LIST OF PARTIES EXCLUDED
17 FROM FEDERAL PROCUREMENT AND NONPROCURE-
18 MENT PROGRAMS.—The Administrator of General
19 Services shall include on the List of Parties Ex-
20 cluded from Federal Procurement and Nonprocure-
21 ment Programs maintained by the Administrator
22 under part 9 of the Federal Acquisition Regulation
23 issued under section 25 of the Office of Federal Pro-
24 curement Policy Act (41 U.S.C. 421) each con-
25 tractor that is debarred, suspended, proposed for de-

1 barment or suspension, or declared ineligible by the
2 head of an executive agency on the basis of a deter-
3 mination of a false certification under paragraph
4 (1).

5 (5) RULE OF CONSTRUCTION.—This section
6 shall not be construed to limit the use of other rem-
7 edies available to the head of an executive agency or
8 any other official of the Federal Government on the
9 basis of a determination of a false certification
10 under paragraph (1).

11 (c) WAIVER.—

12 (1) IN GENERAL.—The President may waive
13 the requirement of subsection (a) on a case-by-case
14 basis if the President determines and certifies in
15 writing to the appropriate congressional committees
16 that it is in the national interest to do so.

17 (2) REPORTING REQUIREMENT.—Not later than
18 April 15, 2008, and semi-annually thereafter, the
19 Administrator for Federal Procurement Policy shall
20 submit to the appropriate congressional committees
21 a report on waivers granted under paragraph (1).

22 (d) IMPLEMENTATION THROUGH THE FEDERAL AC-
23 QUISITION REGULATION.—Not later than 120 days after
24 the date of the enactment of this Act, the Federal Acquisi-
25 tion Regulatory Council shall amend the Federal Acquisi-

1 tion Regulation issued pursuant to section 25 of the Office
2 of Federal Procurement Policy Act (41 U.S.C. 421) to
3 provide for the implementation of the requirements of this
4 section.

5 (e) REPORT.—Not later than one year after the date
6 the Federal Acquisition Regulation is amended under sub-
7 section (e) to implement the requirements of this section,
8 the Administrator of General Services, with the assistance
9 of other executive agencies, shall submit to the Office of
10 Management and Budget and the appropriate congress-
11 sional committees a report on the actions taken under this
12 section.

13 **SEC. 7. SENSE OF CONGRESS ON EFFORTS BY OTHER**
14 **COUNTRIES.**

15 It is the sense of Congress that the governments of
16 all other countries should adopt measures, similar to those
17 contained in this Act, to publicize the activities of all per-
18 sons that, through their financial dealings, knowingly or
19 unknowingly enable the Government of Sudan to continue
20 to oppress and commit genocide against people in the
21 Darfur region and other regions of Sudan, and to author-
22 ize divestment from, and the avoidance of further invest-
23 ment in, such persons.

1 **SEC. 8. SENSE OF CONGRESS ON PEACEKEEPING EFFORTS**
2 **IN SUDAN.**

3 It is the sense of Congress that the President
4 should—

5 (1) continue to work with other members of the
6 international community, including the Permanent
7 Members of the United Nations Security Council,
8 the African Union, the European Union, the Arab
9 League, and the Government of Sudan to facilitate
10 the urgent deployment of a peacekeeping force to
11 Sudan; and

12 (2) bring before the United Nations Security
13 Council, and call for a vote on, a resolution requir-
14 ing meaningful multilateral sanctions against the
15 Government of Sudan in response to its acts of
16 genocide against the people of Darfur and its contin-
17 ued refusal to allow the implementation of a peace-
18 keeping force in Sudan.

19 **SEC. 9. SENSE OF CONGRESS ON THE INTERNATIONAL OB-**
20 **LIGATIONS OF THE UNITED STATES.**

21 It is the sense of Congress that nothing in this Act—

22 (1) conflicts with the international obligations
23 or commitments of the United States; or

24 (2) affects article VI, clause 2, of the Constitu-
25 tion of the United States.

1 **SEC. 10. REPORTS ON SANCTIONS IN SUPPORT OF PEACE**
2 **IN DARFUR.**

3 (a) IN GENERAL.—The Secretary of State and the
4 Secretary of the Treasury shall submit to the appropriate
5 congressional committees a report assessing the effective-
6 ness of sanctions imposed with respect to Sudan at the
7 time the Secretary of State and the Secretary of the
8 Treasury submits reports required under—

9 (1) the Sudan Peace Act (Public Law 107–245;
10 50 U.S.C. 1701 note);

11 (2) the Comprehensive Peace in Sudan Act of
12 2004 (Public Law 108–497; 50 U.S.C. 1701 note);
13 and

14 (3) the Darfur Peace and Accountability Act of
15 2006 (Public Law 109–344; 50 U.S.C. 1701 note).

16 (b) ADDITIONAL REPORT BY THE SECRETARY OF
17 THE TREASURY.—The Secretary of the Treasury shall
18 submit to the appropriate congressional committees a re-
19 port assessing the effectiveness of sanctions imposed with
20 respect to Sudan under the International Emergency Eco-
21 nomic Powers Act (50 U.S.C. 1701 et seq.) at the time
22 the President submits the reports required by section
23 204(c) of such Act (50 U.S.C. 1703(c)) with respect to
24 Executive Order 13,067 (50 U.S.C. 1701 note; relating
25 to blocking property of persons in connection with the con-
26 flict in Sudan’s region of Darfur).

1 (c) CONTENTS.—The reports required by subsections
2 (a) and (b) shall include—

3 (1) a description of each sanction imposed
4 under a law or executive order described in sub-
5 section (a) or (b);

6 (2) the name of the person subject to the sanc-
7 tion, if any; and

8 (3) whether or not the person subject to the
9 sanction is also subject to sanctions imposed by the
10 United Nations.

11 **SEC. 11. REPEAL OF REPORTING REQUIREMENT.**

12 Section 6305 of the U.S. Troop Readiness, Veterans'
13 Care, Katrina Recovery, and Iraq Accountability Appro-
14 priations Act, 2007 (Public Law 110–28; 121 Stat. 172)
15 is repealed.

16 **SEC. 12. TERMINATION.**

17 The provisions of sections 3, 4, 5, 6, and 10 shall
18 terminate 30 days after the date on which the President
19 has certified to Congress that the Government of Sudan
20 has honored its commitments to—

21 (1) abide by United Nations Security Council
22 Resolution 1769 (2007);

23 (2) cease attacks on civilians;

24 (3) demobilize and demilitarize the Janjaweed
25 and associated militias;

- 1 (4) grant free and unfettered access for delivery
- 2 of humanitarian assistance; and
- 3 (5) allow for the safe and voluntary return of
- 4 refugees and internally displaced persons.

Passed the Senate December 12, 2007.

Attest:

Secretary.

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1ST SESSION

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AN ACT

To authorize State and local governments to divest assets in companies that conduct business operations in Sudan, to prohibit United States Government contracts with such companies, and for other purposes.